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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

SONYA LISTER, Plaintiff and Respondent, v. MICHAEL TIMOTHY BOWEN, Defendant and Appellant.	A123682 (San Francisco City and County Super. Ct. No. FDV 08-806221)

Appellant Michael Timothy Bowen appeals from the court's orders restraining him from engaging in various activities regarding respondent Sonya Lister on a variety of grounds. We affirm the court's orders.

BACKGROUND

Lister's Request for a Restraining Order

On July 24, 2008, Lister obtained a temporary restraining order against Bowen from San Francisco County Superior Court, which prohibited Bowen from having any direct or indirect contact with Lister or her daughter and from taking any action, directly or through others, to locate them. The court ordered Bowen to stay at least 100 yards away from the two, from Lister's home, job, vehicle, and from her daughter's school, and scheduled a hearing regarding a further restraining order.

Bowen's Answer

In August 2008, Bowen filed an answer opposing the order[1] and included a letter to the court stating his views. He also attached documents related to a July 17, 2008 emergency protective order that was issued against him at Lister's request, which expired on July 24, 2008.

These documents included his July 17, 2008 letter to the San Francisco Police Department, in which he stated he had been involved with Lister for a few weeks some months before, had broken up with her because she was in "bad shape," and had little contact with her after the break-up; he also stated, however, that Lister's daughter had called him "a few times to say hi," and he had encountered Lister a couple of times on the street, visited her in the hospital, and left her a message the day before. Bowen also included the July 17, 2008 emergency protective order, which stated Bowen had continued to contact Lister against her wishes after she had ended a brief relationship with him because of his erratic behavior, and a "Description of Abuse" form, apparently filled out by Lister, indicating Bowen had appeared uninvited in a parking lot where Lister worked and harassed her.

The Hearing on the Restraining Order

At the September 10, 2008 hearing, both Lister and Bowen, appearing without counsel and speaking under oath, told the court their view of events.

Lister's Contentions

Lister discussed her written statement to the court, which is not in the record. She said she had dated Bowen five or six years before, and recently dated him again for about a month. In the first half of July 2008, Bowen suddenly appeared as she walked in a San Francisco parking lot where she worked. He made comments indicating that he was stalking her; as the court summarized Lister's contentions, Bowen indicated that "he was

[1] Bowen's answer is contained in the record, but Lister's submissions in support of her request for a temporary restraining order are not. The record appears to be incomplete in other respects as well.

around watching you, you didn't always see him. And it sounded like he was going to keep it up."

Lister said on July 16, 2008, Bowen suddenly appeared again as she walked in the parking lot and started talking to her. She did not see where he came from, felt unsafe, and did not wish to talk to him. She had not contacted him or called him, they did not have a good rapport, and he knew she did not care to speak to him.

Lister also said she recently saw Bowen's vehicle parked in front of a Hayward restaurant three blocks from her home, although he lived in Daly City. She was not "able to access entertainment and things" "with him stalking around and driving around and frequenting" her neighborhood.

Lister said Bowen had contacted her 16-year-old daughter without Lister's permission or knowledge, and visited her at their home. Her daughter had contacted Bowen regarding driving lessons he had paid for, unaware of her mother's concerns about him.

Lister thought the stress Bowen was causing would prevent her from maintaining her high-risk pregnancy. Lister was six and a half weeks pregnant.

Lister said Bowen frequented the office of the "CATS Organization"[2] (CATS), where she worked. Bowen had graduated from CATS and sometimes visited at the request of others, to "say hi," or "for a consultation on a job because he's a contractor." She did not want to see him there because she felt he was stalking her.

Lister said Bowen bought her a BMW, which she had not requested. They had a "blow-up" over the car because she felt people were using him and lying to him. She thought Bowen was "buying" her family and friends. He was holding a motorcycle for her cousin, who was in Iraq, "cried" to her father about trying to work things out and purchased a marriage license for him, and bought gifts for her family without telling her.

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[2] As indicated elsewhere in the record, "CATS" refers to "Community Awareness & Treatment Services, Inc.," an organization which describes itself as a private nonprofit organization that provides "a continuum of care for people with drug and alcohol abuse problems."

Lister told the court Bowen knew karate and had a temper, and she was frightened because he was a "big guy" and she was "not very big at all."

Bowen's Contentions

Bowen said he ended the relationship with Lister over the phone three and a half months before, in a "bad blow-up." Among other things, they quarreled over the BMW.

Bowen said he saw Lister three times after they broke up. He was a contractor with job sites near her workplace, and talked with her twice when she walked right in front of him. He asked her how she and her daughter were, and she said, " 'Why are you here? You hurt me because you left.' " He tried to explain to her why he ended the relationship, and later left her a message explaining further. She sought the restraining order the next day.

Bowen said he went to Hayward to date another person and did not look for Lister. He visited Lister's daughter four months before, when he was seeing Lister. He called Lister at some point and told her that her daughter had called him to talk about driving school. He acknowledged he had paid for the daughter's driving school.

Bowen thought Lister's family members were "really, really, really good people" who had accepted him into their home. He wanted to somehow continue his relationships, including with a cousin who was in Iraq, a nephew taking karate classes, and an aunt who also worked for CATS. After the break-up, he thought he would "still do the best" he could "to be involved," and remained "concerned" about Lister's daughter.

Bowen also said he called Lister because he "wanted to keep things professional and at least courteous." He was a graduate of CATS, had been involved there for 11 years, and had donated $300,000 to CATS the previous year. He did not need to be in the CATS office where Lister worked, but needed to be at the main office because he had done remodeling for CATS, and people called him frequently to be a part of their programs. He was going to renovate a building directly next door to a CATS entity called "A Woman's Place." He did not need to have any contact with Lister.

Bowen denied Lister's contentions that he had confronted her in the parking lot. He thought she was trying "to get back" at him.

The Court's Comments and Ruling

The court, on its own initiative, asked Bowen about a case 11 years before, in which he pled guilty to inflicting corporal injury to a spouse or inhabitant, and was jailed for seven days and placed on probation for three years. The court acknowledged that, while this may have occurred before Bowen became "clean and sober," "that history is pretty damning." The court continued:

"And everything that you've told me so far simply underlines what Lister has stated to me and that is that you get pretty obsessive about folks that you become involved with and you creep them out. It's called stalking. And you are invasive and get into their space and get into their emotional and psychological space.

"And they don't want it, but you don't hear that. You just keep thinking that you're simply a nice guy and you have the right to do all these things. You aren't. You're not a nice guy. You think that you're doing nice things, but you're getting into these people's lives. You are taking over their lives.

"You are making a captive of [Lister]. You are stalking her by being friends and neighborly, et cetera, to her family and so forth. The fact that you had this history of domestic violence 11 years ago and the fact that you have such obsessive responses to a woman that you're dating makes me think that there is a true reason here for her to be fearful."

Bowen said no one had ever told him he was obsessive or they did not want him in their life. He said one of Lister's family members had given him a letter stating that they wanted him in their life, but "[i]f anybody at any time said 'Mike'—I would have backed off." The court responded, "Well, we're telling you; Mike, back off, and that means the whole family. She doesn't want you—and neither does the whole family want you to be involved in their lives. Because you are simply creating a spider web around this woman."

Bowen said that he understood what the court was saying, did not need an order, understood it was a very serious issue, believed in restraining orders, was no threat to Lister, and was not going to look for her.

The court announced it would issue a three-year restraining order with the same restraints as those stated in the temporary order, and would underline that Bowen was not to stalk Lister. This included Bowen "contacting family members," "hanging out in [Lister's] neighborhood," "hanging out where she works," "following her, watching her." And "what you [Bowen] call being nice to her family and friends. That's stalking in this particular situation." The court told Bowen to stay at least 100 yards away from Lister and her daughter, and from their home. It barred him having contact with "A Woman's Place," but said he did not need to stay 100 yards away from it for income-producing activities. When Bowen asked what to do regarding such things as the cousin's motorcycle, the court stated, "I don't want you contacting the family. Now, what that means then if you have the motorcycle and the cousin wants you to keep it there, fine, you can do that. But what I don't want you to do is continue to contact the rest of the family members to continue any kind of relationship with them."

The Restraining Order After Hearing

The court issued a three-year restraining order that contained the same terms as the temporary restraining order. It also underlined that Bowen was not to "stalk" Lister or her daughter, and also prohibited Bowen from coming within 100 yards of four San Francisco addresses, apparently identified by Lister as CATS offices where she worked or was sometimes present.[3]

Motion for Reconsideration

Bowen subsequently retained legal counsel and filed a motion for reconsideration of the court's restraining order pursuant to Code of Civil Procedure section 1008, subdivision (a). In support of his motion, Bowen recounted and expanded upon his

[3] One of the addresses listed in the order is 2712 *Mission* Street, but at hearing Lister referred to 2712 *Howard* Street.

history with CATS, Lister, and Lister's family. Lister's aunt, Bowen's brother, and friends of Bowen submitted supporting declarations.

At the hearing, Bowen's counsel stated Bowen had uncovered new facts from telephone and medical records not available at the time of the previous hearing, and had learned that Lister did not pay rent from May to July in 2008. Counsel claimed Lister had sought the restraining order because a victim of domestic violence could not be evicted under Section 8 housing laws.

Counsel also contended Bowen had not known at the previous hearing that he could refute the evidence of his previous domestic violence conviction with evidence of his good character and conduct since that time. The court said its reliance on the prior domestic violence conviction was limited because it occurred before Bowen became "clean and sober," and that Bowen had had the opportunity to submit evidence of his good character and conduct.

Counsel also contended that Bowen did not know the previous case was going to be used against him, had no notice of it, and did not "even know the document that was being used against him." The court stated:

"You know what this is? This is I didn't go out and find myself a lawyer who could tell me how to do this. I didn't ask for a trial. And now I'm sorry that I didn't because the decision went the other way and so now I'm asking for a second bite at the apple."

The court found Bowen did not have new information that he could not have provided had he asked for a trial, and denied the motion.

Notice of Appeal

Bowen subsequently filed a notice of appeal "from the Order of November 4, 2008 . . . denying Appellant's Motion to Reconsider and set aside its previous Order in the above-captioned case." Among other things, he stated as grounds for appeal "the court's failure to admonish the parties pursuant to Family Code section 6306 [, subd.] (c) prevented a full and fair hearing on the issues before the court, and . . . the court's Order

as given orally [from] the bench differs materially from the Order later signed, so as to cause confusion requiring judicial clarification."

Request for Clarification

The record contains a lengthy written statement that Bowen submitted to the court in January 2009. The court held a hearing regarding this statement on February 5, 2009, and issued an amended order.[4]

In his statement, Bowen said he was concerned that Lister had attempted to have him arrested after he ran into Lister's mother-in-law at a market. He also contended Lister had filed false reports and perjured herself in her testimony. He submitted additional documents and exhibits he claimed showed Lister had a history of perjuries, filing false statements, and fraud, and theorized about why Lister had been deceptive to him and to the court.

At the February 2009 hearing, the court characterized Bowen's submission as a request for clarification of the existing order. The court said the order was very clear that Bowen could not have contact with Lister's relatives, and told Bowen, "if they're contacting you, that's one thing, because they want something from you, a motorcycle, a place to keep the motorcycle, or whatever; that's fine. But you can't contact them." If one of Lister's family members sought him out, Bowen could talk with them, but not about Lister.

Bowen, addressing the court directly, asked about phone calls with CATS personnel. The court said he could not initiate the phone calls. He could talk to those who called him, although not about Lister. The court indicated it would eliminate the specific addresses referred to in the written order, and stated Bowen could not contact, or go within 100 yards of, the CATS offices where Lister worked, and was obligated to leave other CATS offices if he discovered Lister was present. Bowen could talk with CATS personnel away from their offices, as long as he did not talk about Lister. He

[4] Bowen submitted his statement, the transcript of the February 5, 2009 hearing, and the court's amended restraining order as part of an augmented record.

could attend company functions if Lister was not going to be present, and engage in pro bono remodeling work for CATS as long as Lister was not present.

At the hearing, Bowen also challenged some of the things Lister had contended. The court stated it would not reconsider its decision. It repeated its view that Bowen was obsessive, and believed his "obsessive kindness and generosity can feel very harassing."

Amended Restraining Order

The court issued an amended restraining order on February 13, 2009. It eliminated the addresses stated in the previous order and instead stated that "[t]he 100 yard stay away also applies to the office building in which Lister is employed and during the hours of her employment."

Motion to Dismiss the Appeal

During the pendency of this appeal, Lister moved to dismiss the appeal based on Bowen's statements in the February 5, 2009 hearing. Lister argued Bowen had indicated he was no longer challenging the restraining order. We denied Lister's motion.

DISCUSSION

The Legislature enacted the Domestic Violence Prevention Act (DVPA) to "prevent the recurrence of acts of violence and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence." (Family Code § 6220 et seq.)[5] The DVPA confers upon the trial court "a discretion designed to be exercised liberally, at least more liberally than a trial court's discretion to restrain civil harassment generally." (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.)

We generally apply an abuse of discretion standard of review to the trial court's orders issued under the DVPA. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) However, "we independently review the question whether the trial court correctly interpreted and applied the applicable constitutional principles. [Citation.] Facts relevant

[5] All statutory references stated herein cite to the Family Code unless otherwise indicated.

to the constitutional analysis must be reviewed de novo, independent of the trial court's findings." (*Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1166.)

I. *Vagueness*

Bowen argues that the court's restraining order is unconstitutionally vague on a number of grounds. We conclude his arguments lack merit.

As we stated in *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, cited by both parties for the general standard to apply regarding Bowen's vagueness arguments, "[a] regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons 'of common intelligence must necessarily guess at its meaning and differ as to its application' [citations]. The void for vagueness doctrine is designed to prevent arbitrary and discriminatory enforcement." (*Id.* at pp. 773-774.)

Our independent research indicates this same general standard applies to injunctions and restraining orders. They "must be definite enough to provide a standard of conduct for those whose activities are proscribed, as well as a standard for the ascertainment of violations of the injunctive order by the courts called upon to apply it. An injunction which forbids an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application exceeds the power of the court." (*Pitchess v. Superior Court* (1969) 2 Cal.App.3d 644, 651.) However, an injunction "need not etch forbidden actions with microscopic precision, but may instead draw entire categories of proscribed conduct. Thus, an injunction may have wide scope, yet if it is reasonably possible to determine whether a particular act is included within its grasp, the injunction is valid. [¶] In addition, when determining whether a party has been given sufficient notice of conduct prohibited by an injunction, the injunction must be interpreted in the light of the entire record." (*People v. Custom Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 681.)

We evaluate Bowen's arguments with these standards in mind.[6]

[6] At the time the court issued its restraining order, Bowen did not object to its terms on vagueness or overbreadth grounds. Lister, however, does not raise any issue of

A. ***Discrepancies Between the Court's Verbal and Written Orders***

Bowen contends that "[e]ach time he comes to court, he is given various orders by the commissioner. Each time, these orders are not reflected in the written Order with which he is presented." This discrepancy, Bowen argues, "is fair neither to the appellant nor the respondent, and threatens the orderly maintenance of justice in this matter."

Bowen does not support this argument with any specific legal authority, nor does he point out specific discrepancies for our consideration. His sparse argument ignores that " '[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." "[C]onclusory claims of error will fail." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) We reject Bowen's claim regarding purported discrepancies because he has not met his burden as appellant of affirmatively showing error.

B. ***Vagueness of the Court's Verbal Orders***

Bowen next argues that, assuming the court's verbal orders are binding notwithstanding their "discrepancy" from the written orders, "these orders are too vague to be understood and applied." We reject this argument as well.

1. ***Contacting Family Members***

Bowen points to the court's orders at the September 10, 2008 hearing, that he was enjoined from "contacting" Lister's "family" and "continu[ing] any kind of relationship with them." We find nothing vague about the court's orders. The court concluded

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forfeiture. Therefore, we do not further address the question. (See, e.g., *In re Sheena K.* (2007) 40 Cal.4th 875 [discussing issues regarding forfeiture in the absence of a vagueness or overbreadth objection below to a term of probation].)

Bowen was acting obsessively towards Lister and stalking her, and there was evidence that he had contacted her 16-year-old daughter after the break-up without Lister's knowledge. Specifically, Lister reported that Bowen had visited her daughter at Lister's home without Lister's permission or knowledge, and was paying for her daughter's driving lessons. Bowen admitted visiting with the daughter, but contended the visit had occurred before he broke up with Lister. Lister's account, however, suggested otherwise, as did Bowen's own account; he told the court that the daughter said to him when he visited, "Mike, I'm sorry you had to leave. I miss you. I wish you'd come back." Thus, the court had reason to doubt Bowen's credibility and intentions.

After hearing about Bowen's continuing contacts with various members of her family (i.e., her daughter, father, aunt, and a cousin), the court also concluded Bowen was building a "spider web" around Lister by pursuing these contacts. Indeed, Bowen all but admitted this when he told the court that after their break-up, he thought he could still "be involved" with Lister's family and remained "concerned" about Lister's daughter after the break-up. The court found in "this particular situation" that Bowen's stalking of Lister including "being nice to her family." It prohibited Bowen from "contacting" Lister's "family" in this context. In other words, this prohibition was clear, and intended to help restrain Bowen from stalking Lister.

2. *References to Lister*

Bowen also points to the court's clarification at the February 5, 2009 hearing that he could have contact with family members who sought him out, as long as the contacts do not "involve" Lister. He claims this seems "to suggest that the contacts may not involve Lister as a subject, rather than as a participant, but the mental focus which one must bring to bear on the transcript to attempt to understand the order highlights the vagueness of the court's restriction on Bowen's 'contacts' with the 'family.' "

Before addressing the merits of this argument, we note that Bowen raises a question about the "legal import of the trial court's actions subsequent to the Court of Appeal gaining jurisdiction." Lister does not address the issue, but we do so. Bowen is not appealing from the court's February 2009 clarification and amended order, but from

the September 10, 2008 order and the November 2008 motion for reconsideration.[7] We cannot rule regarding the propriety of rulings from which Bowen has not appealed. (See, e.g., *Michaels v. Mulholland* (1953) 115 Cal.App.2d 563, 565 [holding that, no appeal having been taken from the orders complained of, "there is nothing for this court to pass upon relative thereto"]; *Gonzales v. R.J. Novick Constr. Co.* (1978) 20 Cal.3d 798, 805 [" '[a]n appeal from a distinct and independent part of a judgment does not bring up the other parts for review in the appellate court' "].) Nonetheless, we must determine if we may consider these postappeal events at all.

"It is an elementary rule of appellate procedure that, when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered. [Citation.] This rule preserves an orderly system of appellate procedure by preventing litigants from circumventing the normal sequence of litigation." (*Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d. 800, 813.) That said, both parties discuss the court's statements at the February 2009 hearing, which appellant submitted in an augmented record, and for good reason: the court's clarification and amendment of its order alters the matters appealed from. Furthermore, the rule limiting consideration of matters "is somewhat flexible; courts have not hesitated to consider postjudgment events when legislative changes have occurred subsequent to a judgment [citations] or when subsequent events have caused issues to become moot." (*Ibid*.) Thus, we conclude that, although the propriety of the court's February 2009 verbal and written orders is not before us, we have discretion to consider the court's February 2009 rulings to the extent they altered the matters appealed from or rendered moot issues raised by the parties.

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[7] Bowen's notice of appeal states that he is appealing from the court's November 4, 2008 ruling, which ruled on his motion for reconsideration. However, the notice also refers to the court's rulings regarding the September 2008 restraining order itself. We liberally construe notices of appeal and, accordingly, recognize the notice as an appeal from the restraining order. (See, e.g., *People v. Earls* (1992) 10 Cal.App.4th 184, 191 ["[g]enerally speaking, a notice of appeal shall be liberally construed in favor of its sufficiency"].)

We conclude the court's prohibitions regarding Lister in contacts with Bowen initiated by Lister's family members, as clarified by its statements at the February 2009 hearing, are not vague. At the hearing, the court indicated that Bowen was prohibited from initiating contact with members of Lister's family, but could speak with those who sought him out, as long as he did not talk about Lister during these contacts. When Bowen acknowledged that he had referred to the court proceedings in a conversation with one of Lister's relatives, the court said, "that's not okay. *If you want to talk about something that has completely nothing to do with Sonya*, and they come to you, they initiate the conversation, they call you, they invite you to their home, then you may go. You may have the conversation. You may do those things. *But you may not discuss Sonya*." (Italics added.) The court's instructions are clear: Bowen may not discuss anything regarding Lister with her family members if they seek him out. Bowen's contention that the court's instructions were somehow confusing is unpersuasive.

3. *Subjects of the Order*

Bowen further argues the subjects of the order are not clear because the court's written order prohibits him from having contact with Lister and her child, but the court stated something broader at the September 10, 2008 hearing, telling him to "back off and that means the whole family." We reject this argument as well. The court's written order specifically extended protection to Bowen and her daughter. Just as clearly, the court found at the September 2008 hearing that Bowen's stalking of Lister "in this particular situation" included his "being nice to her family," and prohibited him from initiating contacts with Lister's family members as part of its efforts to protect Lister. Bowen's argument is unpersuasive in light of this record.

4. *Lister's Cousin's Motorcycle*

Finally, Bowen argues the court's order at the September 10, 2008 hearing regarding the motorcycle he was storing for Lister's cousin was confusing. According to Lister, "[n]o disinterested reader can discern with certainty how Bowen is allowed to communicate with the cousin regarding the motorcycle so as not to run afoul of the judge's order." We need not address the merits of this argument in light of the court's

clarification of its order regarding contact with members of Lister's family at the February 2009 hearing. Pursuant to the court's clarification, it is clear that Bowen may not contact the cousin but, if contacted by him, could discuss the motorcycle with him. The court's clarification renders moot any vagueness argument Bowen may raise about the motorcycle based on the court's September 2008 ruling. (*Reserve Insurance Co. v. Pisciotta, supra,* 30 Cal.3d at p. 813.)

II. *Overbreadth*

Bowen next argues that the restraining order is unconstitutionally overbroad because it bars him from contacting Lister's family members. According to Bowen, the court's bar violates his rights to free association with others and free speech pursuant to the First and Fifth Amendments, and should be examined under "the closest scrutiny" pursuant to *Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 464 (*Governor Gray Davis Com.*).

Bowen does not explain, and we do not see, the relevance of *Governor Gray Davis Com.*, which involved a First Amendment issue in the regulation of a political organization's advertising activities. (*Governor Gray Davis Com., supra,* 102 Cal.App.4th 449.) As Lister points out, our Supreme Court has stated that "although the Constitution recognizes and shields from government intrusion a *limited* right of association, it does not recognize 'a generalized right of "social association." ' " (*People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090, 1110). The United States Supreme Court "has identified two kinds of associations entitled to First Amendment protection—those with an 'intrinsic' or 'intimate' value, and those that are 'instrumental' to forms of religious and political expression and activity." (*Ibid.*) Bowen does not establish that either interest is implicated by the court's order, or how his free speech rights have been violated. Thus, his argument fails. (*Denham, supra,* 2 Cal.3d at p. 564; *In re S.C., supra,* 138 Cal.App.4th at p. 408.)

Bowen also argues that the court's order prohibiting him from contact with Lister's "family members" is overbroad because the court did not specifically name these family members. Bowen relies on language in section 6320, which states that "[t]he

court may issue an ex parte order enjoining a party from" engaging in various activities (e.g., stalking) "or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other *named* family or household members." (§ 6320, subd. (a), italics added.) Based on this language, Bowen argues that the court's order is "overbroad under either a constitutional or statutory" analysis.

This argument also is unpersuasive. Section 6320 requirements were satisfied when the court named Lister and her daughter in its restraining order. As we have discussed, the court did *not* enjoin Bowen from acting in the ways described in the statute towards Lister's unnamed family members; rather, the court barred Bowen from initiating contact with Lister's family members, and from discussing Lister with them if they contacted him, because it concluded these contacts and discussions were a part of Bowen's stalking *of Lister*. Bowen does show the court erred by doing so. (*Denham, supra,* 2 Cal.3d at p. 564; *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.)

III. *Family Code Section 6306*

Finally, Bowen argues the requirement in section 6306, as implemented according to the Superior Court of San Francisco County, Local Rules, rule 11.9.I, that the court, prior to hearing, investigate and consider a subject's prior convictions for such things as domestic violence violated his constitutional due process rights to a fair hearing. He presents a hodgepodge of arguments in support of his view. We conclude these also lack merit.

The DVPA gives courts the authority to issue an order, with or without notice, "to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300.) Section 6306 states:

"Prior to a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has any prior criminal conviction for a violent felony specified in Section

667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; has any misdemeanor conviction involving domestic violence, weapons, or other violence; has any outstanding warrant; is currently on parole or probation; or has any prior restraining order or any violation of a prior restraining order." (§ 6306, subd. (a).)

The court, prior to deciding whether to issue an order, must consider evidence of such convictions. (§ 6306, subd. (b)(1).) Furthermore, after issuing its ruling, the court "shall advise the parties that they may request the information" relied upon by the court. (§ 6306, subd. (c)(1).) The court shall release the information to parties requesting it. (§ 6306, subd. (c)(2).) Superior Court of San Francisco County, Local Rules, rule 11.9.I authorizes the court to designate a court employee to conduct the search called for by section 6306.

Bowen argues that the evidence of a domestic violence conviction 11 years before would have been inadmissible if offered by a party pursuant to Evidence Code section 1109, subdivision (e). Whether or not this is the case, Bowen fails to explain why it is relevant here, particularly in light of the fact that section 6306 does not contain such a time limit. Therefore, this argument is unpersuasive. (*Denham*, *supra*, 2 Cal.3d at p. 564; *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.)

Next, Bowen argues that, in an effort to " 'level the playing field,' " he attempted to introduce records of Lister's criminal convictions that were less remote in time and were probative of her veracity, but the court gave them no weight in the proceedings. Bowen's record citation in his brief indicates he is referring to his January 2009 submissions to the court below. However, Bowen has not appealed from the court's ruling on this evidence and, therefore, the issue is not properly before us. (See, e.g., *Michaels v. Mulholland*, *supra*, 115 Cal.App.2d at p. 565; *Gonzales v. R.J. Novick Constr. Co.*, *supra*, 20 Cal.3d at p. 805.) Regardless, we do not see the relevance of the court's decision not to reconsider its ruling to an analysis of Bowen's due process rights under section 6306.

At the heart of Bowen's appellate claim, however, are three main arguments. First, he argues that the requirement in section 6306 that the court search before the

hearing for, and consider, prior convictions "moves [the court] from the role as finder of fact into the role of advocate, and indeed voice, for one of the parties," and "necessarily tips the balance against fairness." Bowen does not support this argument with a discussion of any pertinent legal authority, however. On the other hand, Lister points out that, in reviewing a trial court's exercise of its discretion in refusing to allow certain oral testimony in a DVPA proceeding, the Sixth Appellate District has stated that "the trial court should be guided by the constitutional principle that '[d]ue process guarantees " 'notice and opportunity for hearing *appropriate to the nature of the case*.' " [Citation.]' [Citation.] Moreover, the trial court should be mindful that 'in light of the vulnerability of the targeted population (largely unrepresented women and their minor children), bench officers are "necessarily expected to play a far more active role in developing the facts, before then making the decision whether or not to issue the requested permanent protective order." [Citation.]' [Citation.]" (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1500.) In light of this holding, and in the absence of Bowen providing any meaningful legal analysis, we reject his conclusory argument. (*Denham, supra,* at p. 564; *In re S.C., supra,* 138 Cal.App.4th at p. 408.)

Second, Bowen argues section 6306 inappropriately "creates exchanges" between the court and the parties. Bowen points specifically to the court telling him he was "not a nice guy" who was "making a captive" of Lister; telling him to back off because "the whole family" did not want him to be involved in their lives; stating as evidence of his stalking that he went to Lister's home without her permission; referring to his "misogynist attitude" as an indication that he was stalking her rather than being victimized by her; and referring to his return to court as an indication that he was "obsessed" and "not able to let go."

Bowen contends that the court's statements were inaccurate, or unfairly biased by the information it had obtained regarding his prior domestic violence conviction. According to Bowen, "[a] broad reading of the three transcripts makes clear that the court *sua sponte* read a great deal into the fact of the 11-year-old conviction. It elicited very little evidence from Lister. It declined to receive evidence from Bowen – evidence of

Lister's motive to fabricate, evidence tending to impeach Lister's veracity, evidence of Bowen's considerable rehabilitation over the past 11 years." Instead, the court was "tainted by its receipt of whatever information it relied on in researching this old conviction."

Bowen's argument is unpersuasive for at least two reasons. The transcript of the September 10, 2008 hearing indicates that, contrary to Bowen's characterization, the court gave both Lister and Bowen extensive opportunities to state their version of events, and was presented with a good deal of information. In contrast, the court made only brief references to Bowen's prior domestic violence conviction. It focused on its concern, based on evidence from both Lister and Bowen, that Bowen was acting obsessively and inappropriately towards Lister, stalking her both directly and via her family members. It gave no indication that its consideration of the previous conviction somehow "tainted" its view of this considerable evidence. Clearly, the court believed Lister's version of events, which included that after she broke up with him, Bowen continued to contact her against her wishes, visited her daughter at her home without her knowledge or permission, and continued his contacts with her family members. The court was entitled to reach this conclusion. (See, e.g., *Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 823 [finding it was the exclusive province of the trier of fact to determine the credibility of a witness in evaluating whether an act of domestic violence had occurred].) In short, contrary to Bowen's contentions, the court relied heavily on the considerable evidence of Bowen's stalking in issuing its restraining order. Bowen does not establish that the court view of this evidence was somehow "tainted" by his previous conviction.

Also, Bowen's contention that the court somehow should have considered the evidence he offered regarding Lister's veracity ignores that he neither offered this evidence at the September 10, 2008 hearing, nor requested any further continuance or proceedings before the court ruled on Lister's request for a restraining order. His submissions after that time came in support of his motion for reconsideration and his motion for clarification. Once more, Bowen fails to meet his burden as appellant of affirmatively showing error in the court's refusal to further consider the evidence he

presented.[8] (*Denham, supra,* 2 Cal.3d at p. 564; *In re S.C., supra,* 138 Cal.App.4th at p. 408.)

Third, Bowen argues that the information relied upon by the trial court was "not brought by the parties and not subject to confrontation." To the extent Bowen argues this is true as a matter, of law, it is incorrect. Section 6306 provides that "[a]fter issuing its ruling, the court shall advise the parties that they may request the information described in subdivision (b) upon which the court relied" (§ 6306, subd. (c)(1)), and, upon the request of either party, "the court shall release the information to the parties or, upon either party's request, to his or her attorney in that proceeding." (§ 6306, subd. (c)(2).) Bowen does not explain why this is constitutionally insufficient.

However, as Bowen also points out, the court did not advise Bowen and Lister regarding the information it cited about Bowen's prior domestic violence conviction at the September 10, 2008 hearing. Section 6306 requires the court to do so. (§ 6306, subd. (c)(1).) Therefore, the court erred. Nevertheless, as Lister points out, Bowen does not argue how the court's error was prejudicial to his case. "[W]e cannot presume prejudice and will not reverse . . . in the absence of an affirmative showing that there was a miscarriage of justice." (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) Therefore, we reject this argument as well.

IV. *Remand*

Finally, while we affirm the court's rulings in their entirety, we nonetheless remand this matter on our own initiative and for a limited purpose.

As we have discussed in subpart I.A., *ante,* defendant has not met his appellate burden of establishing that the trial court erred because of purported "discrepancies" between the court's oral and written orders. We do not have any quarrel with the

[8] Again, we note that the propriety of the court's rulings in February 2009 are not a subject of the present appeal. Furthermore, while Bowen did appeal directly from the court's denial of his motion for reconsideration, such motions generally are not appealable orders. (*Crotty v. Trader* (1996) 50 Cal.App.4th 765, 769.)

substance of the court's oral and written rulings, nor do we conclude that the court's written order did not generally encompass its more detailed oral orders.

Nonetheless, the record indicates that the court did not *explicitly* state all of its oral orders regarding Bowen's conduct in one written restraining order, such as what Bowen was prohibited from doing with regard to Lister's relatives. This could create some confusion in the future, should enforcement of the court's orders be sought. Therefore, we remand this matter to the trial court with the instruction that the trial court promptly issue a single, comprehensive written order that states all of its orders to date, whether written or oral, regarding Bowen's conduct. Of course, the court is entitled to amend its orders in light of any events subsequent to this appeal.

DISPOSITION

The court's orders are affirmed in their entirety. We remand this matter to the trial court with the instruction that the court promptly issue a single, comprehensive written order that states all of its orders to date, whether written or oral, regarding Bowen's conduct, such as what he is prohibited from doing with regard to Lister's relatives. Nothing herein should be construed as preventing the court from amending its orders in light of any events subsequent to this appeal.

_____
Lambden, J.

We concur:

_____
Kline, P.J.

_____
Richman, J.